

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:4

PLR-125751-06

Date: NOVEMBER 30, 2006

Re:

Legend:

Decedent =
Daughter =
Attorney =
Date 1 =
Date 2 =
x% =
z% =
W =
\$Q =
\$U =
\$Z =
Trust =

Foundation =
State =
Fund =
Trustee =

Dear ,

This is in response to a letter from your authorized representative, dated May 15, 2006, requesting extensions of time under section 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

According to the facts presented and representations made, Decedent died testate on Date 2. The dispositive provisions for Decedent's estate were contained in the Fourth Amendment (and Restatement) of the Decedent Revocable Trust (Trust) executed on Date 1.

Paragraph 6.2.A of Trust provides for a pecuniary bequest of the lesser of (i) \$Q, or (ii) that fractional share equal to z% of the balance of the trust estate after the payment of certain debts and expenses, to be paid to a charitable lead unitrust (CLUT) intended to qualify for an estate tax charitable deduction under section 2055(e)(2)(B). Under the terms of the CLUT, the trustee is to pay an x% unitrust amount to Foundation for a W year term. On the expiration of the W year term, the corpus is to be distributed to the descendants of Decedent's daughter, per stirpes. It is represented that upon Decedent's death, pursuant to the formula contained in Paragraph 6.2.A, \$Q passed to CLUT.

Attorney prepared and filed a timely federal estate tax return, Form 706, with respect to Decedent's estate. In an attachment to Schedule R, Attorney reported that CLUT was to be divided into two trusts, a GST Exempt CLUT and a GST Non-exempt CLUT, as authorized under § 26.2654-1(b)(1) of the Generation-skipping Transfer (GST) Regulations. Trustee funded the GST Exempt CLUT with assets having a cumulative fair market value equal to the Decedent's available GST exemption (\$U), and the GST Non-exempt CLUT with the assets remaining that had not been allocated to the GST Exempt CLUT. An allocation of \$U of Decedent's GST exemption was made on Schedule R with respect to the GST Exempt CLUT.

However, in determining the maximum amount that could pass to the GST Exempt CLUT for which a zero inclusion ratio could be obtained, Attorney failed to take into account the estate tax charitable deduction allowable with respect to CLUT. Further, in allocating the \$U of GST exemption to GST Exempt CLUT, Attorney failed to take into account the charitable deduction allowable with respect to the GST Exempt CLUT. Thus, the U\$ allocated to the GST Exempt CLUT exceeded by \$Z the amount necessary to produce a zero inclusion ratio.

Decedent's estate has requested an extension of time under section 301.9100-1 as follows: (1) to sever the GST Non-exempt CLUT under section 26.2654-1(b) of the Generation-skipping Transfer Tax regulations into two trusts, a Second GST Exempt CLUT and a GST Non-exempt CLUT; and (2) to allocate Decedent's remaining GST exemption equal to \$Z, to the Second GST Exempt CLUT.

In addition, a ruling is requested that the merger of GST Exempt CLUT and Second GST Exempt CLUT will not alter the inclusion ratio of the trusts.

Section 2601 imposes a tax on every generation-skipping transfer.

Section 2602 provides that the amount of the GST tax is determined by multiplying the taxable amount by the applicable rate. Section 2641(a) defines “applicable rate” as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer. Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is generally defined as the excess of 1 over the “applicable fraction”. The applicable fraction, as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of GST exemption under § 2631 allocated to the trust (or to property transferred in a direct skip), and the denominator is the value of the property transferred to the trust or involved in the direct skip reduced by the sum of: (i) any federal estate tax and any State death tax incurred by reason of the transfer that is chargeable to the trust and is actually recovered from the trust; and (ii) the amount of any charitable deduction allowed under section 2055, 2106, or 2522 with respect to the transfer.

Under § 2631(a) as in effect during the years involved in this case, for purposes of determining the inclusion ratio, every individual is allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) that may be allocated by the individual (or his executor) to any property with respect to which the individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, is irrevocable.

Section 2632(a)(1) provides that any allocation by an individual of his or her GST exemption under section 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual’s estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(4)(i) provides that except as provided in section 26.2642-3 (relating to charitable lead annuity trusts), an allocation of GST exemption to a trust is void to the extent the amount allocated exceeds the amount necessary to obtain an inclusion ratio of zero with respect to the trust.

Section 26.2632-1(d)(1) provides, in part, that an allocation of a decedent’s unused GST exemption by the executor of the decedent’s estate is made on the appropriate United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706 or 706NA) filed on or before the date prescribed for filing the return by section 6075(a) (including any extensions actually granted). An allocation of GST exemption with respect to property included in the gross estate is effective as of the date of death.

Section 2642(b)(2)(A) provides that if property is transferred as a result of the death of the transferor, the value of such property for purposes of section

2642(a) shall be its value as finally determined for purposes of chapter 11. Section 2642(b)(2)(B) provides that any allocation of exemption to property transferred as a result of the death of the transferor shall be effective on and after the date of the death of the transferor.

Section 26.2654-1(b)(1) provides that the severance of a trust that is included in the transferor's gross estate (or created under the transferor's will) into two or more trusts is recognized for purposes of chapter 13 if—(i) The trust is severed pursuant to direction in the governing instrument providing that the trust is to be divided upon the death of the transferor; or (ii) The governing instrument does not require or otherwise direct severance but the trust is severed pursuant to discretionary authority granted either under the governing instrument or under local law; and (A) The terms of the new trusts provide in the aggregate for the same succession of interests and beneficiaries as are provided in the original trust; (B) The severance occurs prior to the date prescribed for filing the Federal estate tax return (including extensions of time actually granted) for the estate of the transferor; and (C) Either—(1) the new trusts are severed on a fractional basis. If severed on a fractional basis, the separate trusts need not be funded with a pro rata portion of each asset held by the undivided trust. The trusts may be funded on a nonpro-rata basis provided funding is based on either the fair market value of the assets on the date of funding or in a manner that fairly reflects the net appreciation or depreciation in the value of the assets measured from the valuation date to the date of funding.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under §§ 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a generation-skipping trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may

seek an extension of time to make an allocation described in §§ 2642(b)(1) or (b)(2) or an election described in §§ 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 310.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301-9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in §2642(b)(1) under the provisions of § 301.9100-3.

Requests for relief subject to section 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied.

Accordingly, under section 301.9100-3, the estate is granted an extension of time of sixty (60) days from the date of this letter to: (1) to sever the GST Non-exempt CLUT under section 26.2654-1(b) of the Generation-skipping Transfer Tax regulations into two trusts, a Second GST Exempt CLUT and a GST Non-exempt CLUT; and (2) to allocate Decedent's remaining GST exemption equal to \$Z, to the Second GST Exempt CLUT.

As noted above, the taxpayer also proposes to consolidate GST Exempt CLUT and Second GST Exempt CLUT. As discussed above, and based on the facts submitted and representation, GST Exempt CLUT currently has an inclusion ratio of zero. Assuming Second GST Exempt CLUT is severed pursuant to the relief granted in this letter ruling, in accordance with the rules

contained in section 26.2654-1(b), that trust will be recognized as a separate trust for GST tax purposes, as of Decedent's date of death. Further, assuming sufficient GST exemption is allocated to the trust pursuant to the relief granted in this letter ruling, the trust will have an inclusion ratio of zero.

GST Exempt CLUT and Second GST Exempt CLUT have identical dispositive terms, and each will have an inclusion ratio of zero. We conclude that the merger of the two trusts will not alter the inclusion ratio of either trust or cause either trust or the combined GST Exempt Trust to be subject to the GST Tax. See section 26.2601-1(b)(4)(i)(E), Example 6. This example considers the effect on exempt status of the merger of two trusts created prior to September 25, 1985 (the effective date of the GST tax). At a minimum, a change that would not affect the GST tax status of a trust that was irrevocable on September 25, 1985, should similarly not affect the exempt status of a trust that is exempt from GST tax because sufficient GST exemption was allocated to the trust to result in an inclusion ratio of zero.

The proposed allocation, division and merger of trusts should be reported on a supplemental Form 706. This form is to be filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to each return. Additional copies are enclosed for this purpose.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

William P. O'Shea
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure (2)

Copy of Letter for section 6110 purposes

Three Copies of Letter to file with supplemental gift tax returns